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## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-153751

DATE: October 14, 1976

MATTER OF: Blodgett Key punching Company

### DIGEST:

1. A contract for conversion and storage of data to machine (computer) readable form is not manufacturing for the purpose of the Buy American Act.
2. Computer tape, initially processed abroad, and further processed in United States is not a manufactured end product for purposes of Buy American Act.

This is a bid protest by Blodgett Key punching Company relative to the application of the Buy American Act, 41 U.S.C. 10a-d (1970), to a procurement by the Department of the Air Force for processing computer tapes in support of the LITE (Legal Information Through Electronics) Project. We note that since this procurement was initiated, the Air Force now refers to this program as Federal Legal Information Through Electronics, or FLITE. The questions for our determination are whether the Act is applicable to this procurement and, if so, whether the delivered product, processed tape, is of domestic origin for purposes of the Act.

This protest arises because of the contract award by the Air Force to the low bidder without applying the Buy American evaluation factor. The Air Force takes the position that the Act is not applicable to this LITE Program data processing procurement because the procurement is one for services, that is, the conversion of existing data, rather than one for supplies. Alternatively, the Air Force contends that the delivered tapes are domestic end items even if they are evaluated pursuant to the Act.

The contractor, International Computer Resources, Inc., agreed to deliver processed "error-free" output magnetic tape to the Air Force. Information is provided by the LITE Project in the form of printed decisions of various judicial and administrative forums and ultimately is encoded or processed on to computer tape. The contractor has developed a detailed set of procedures and instructions for processing the information, and has provided the instructions and tapes to a Korean facility for processing.

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There the legal materials are keypunched onto cards and then processed into tapes. The same materials are also typed at the Korean facility in a form which can be scanned by an optical reader and processed into magnetic tapes. Thus, two complete sets of processed tapes are sent to the United States for verification and correction by the contractor. In this country, the electronic data contained on the two tapes are computer processed, utilizing appropriate software to produce a printout of inconsistencies. This list is manually edited to indicate the correct tape or the necessary corrections required. Thereafter, an "error-free output tape" is produced in a "three-way match-merge" operation. This tape is processed onto still another tape of domestic manufacture to fit the LITE computer format and ultimately is delivered to the Air Force.

In pertinent part, the Act provides that "only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies, mined, produced, or manufactured \* \* \* in the United States, shall be acquired for public use." Executive Order 10582 provides that articles, materials and supplies shall be considered to be of foreign origin if the cost of foreign products used in them constitutes 50 percent or more of the cost of all component products used in them. Under these provisions, application of a Buy American Act differential is required if what will be furnished the Government (1) is not manufactured in the United States, or (2) is manufactured in the United States and consists of foreign components which make up 50 percent or more of the cost of the total component cost.

We do not believe that by any conventional standard the process of data capture and consequent computer processing can be considered to be "manufacturing", notwithstanding that the data may be stored or copied on computer tapes or other media for further use.

In Descomp, Inc. v. Sampson, 377 F. Supp 254 (1974), the Court in reviewing the Secretary of Labor's determination that a contract for keypunching was one for services rather than one for materials for the purpose of the Service Contract Act, stated:

"\* \* \* It appears to this Court that the primary function of the keypunching contract is to compile certain information from the Government's own source records and to translate it into a language which can be interpreted by one of the Government's own computers. When the data is returned to the Government translated into 'computer language', it is fed into the computer where it may be stored

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and recalled whenever necessary. Thus, it appears that what the Government is primarily buying is translation. The punch cards and tape are merely a product manifesting the service. An analogy would be a contract to translate certain documents of a Government agency into a foreign language, \* \* \*. In order to complete his task, the translator would, of course, have to write down the translated passages. Just as in the keypunching case, the 'finished product' would be a material item, in this instance a manuscript. Yet it could not seriously be asserted that the translation contract was one for materials simply because the finished product is in material form. \* \* \*

\* \* \* [T]he analogies \* \* \* serve to illustrate that many contracts for services will involve some material end-product as a manifestation that the service was performed, and that where the value of the material returned, be it paper sheets or punched cards, is minuscule in relation to the labor expended, the contract can be treated as one for services. \* \* \*  
(Emphasis added).

We believe the logic of the Court in Descomp, supra, is equally applicable to this case. What is purchased here is processed information which ultimately will be resident on magnetic tape. It is clear that the primary purpose of this LITE data processing procurement is not the acquisition of articles such as computer tapes, but rather it is the conversion of information to machine readable form. For example, technology would permit the information to remain resident in the contractor's computers, so that the only product to be "delivered" to a Government computer would be electronic impulses. We are, therefore, unable to extend the reach of the Buy American Act to the procurement in question.

Accordingly, we conclude that this procurement is one for services and not subject to the Buy American Act. Accordingly, the protest is denied.

Deputy

*R. F. K. 1174*  
Comptroller General  
of the United States